

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

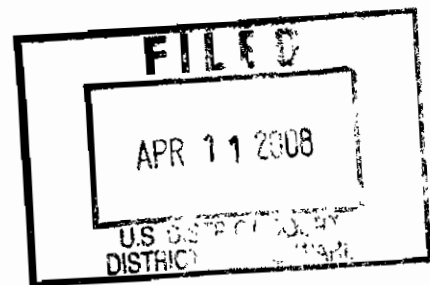
THOMAS R. MILLER
appellant,

v.

STATE OF DELAWARE
appellee.

• C.F.A. NOS 592-12-0044 Thru 592-12-
• 0047
• 1:08-CV-137 (GMS)
•
•
•
•
•
•

APPENDIX TO OPENING BRIEF OF
GROUND ONE



(B) SCANNED

DATED: April 9, 2008

Thomas R. Miller
THOMAS R. MILLER
DCC
1181 PADDOCK RD.
SMYRNA, DE 19977

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- One 2 page information Exhibit A-4



PUBLIC DEFENDER OF THE STATE OF DELAWARE
SUSSEX COUNTY OFFICE
12 EAST PINE STREET
GEORGETOWN, DELAWARE 19947

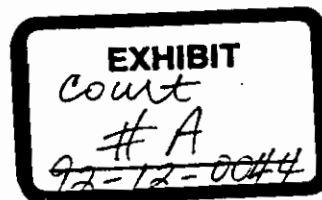
110

CERTIFIED
AS A TRUE COPY
ATTEST [Signature]
PROTHONOTARY
Per [Signature]
CLERK

DATE 12/3/92

THIS WILL CONFIRM THAT I WAIVE MY PRELIMINARY HEARING IN THE
COURT OF COMMON PLEAS FOR A COPY OF THE POLICE REPORT AND FURTHER
I AGREE THAT THE STATE CAN PROCEED IN THE SUPERIOR COURT BY THE
FILING OF INFORMATIONS IN LIEU OF PRESENTING IT TO THE GRAND JUR.
FOR INDICTMENT.

Richard Thomas Miller
DEFENDANT



A-3

E- A-2

was sentenced to a period of incarceration of twenty years. Subsequently, the defendant filed a motion for postconviction relief which was granted, and the defendant was allowed to withdraw his guilty plea and proceed to trial on all charges. Following a jury trial, the defendant was convicted on May 23, 1994 of unlawful sexual intercourse in the first degree and burglary in the second degree. The defendant was sentenced to a period of life imprisonment as to the sex offense and a period of eight years as to the burglary. Following the defendant's unsuccessful appeal, he filed the present motion with the Court.

Ground One.
"Not Signing or Waived Indictment"

There are no procedural bars. The defendant's claim alleges a lack of jurisdiction due to the failure of his case to be prosecuted by way of indictment.

The defendant was prosecuted by an information the Department of Justice filed on December 28, 1992. On January 8, 1993, a written arraignment, pleading not guilty, was filed pursuant to Rule 10(c). Mr. Miller and his attorney executed this by written pleading. A review of the Court's docket reveals that an executed waiver of indictment was not filed with the information. The Court should have picked up this error because Superior Court Criminal Rule 7(b) requires that a felony crime be prosecuted by indictment unless the defendant has waived indictment in open Court or in writing. The issue: did Superior Court have jurisdiction to try and subsequently sentence the defendant? For the reasons stated below, I find that, by the

defendant's conduct, there was a de facto waiver of his right to be indicted and that the defect in the record should not result in this defendant having another trial.

Applicable Rule

A criminal "offense within the exclusive jurisdiction of Superior Court other than a capital crime" must be prosecuted by indictment unless the indictment is waived and proceeds by information. Super. Ct. Crim. R. 7(a). The defendant may waive indictment and proceed by information after he or she has been advised of the nature of the charge and of his or her rights. Super. Ct. Crim. R. 7(b). Under the Delaware Superior Court Criminal Rules, the defendant may waive prosecution by indictment in writing or in open Court. Super. Ct. Crim. R. 7(b).

Pursuant to rule 61(g)(1), the record has been expanded. Pursuant to that Rule, the Court directed the Department of Justice, the Public Defender's Office and the contract attorney to review their files to determine if the defendant had executed any document evidencing his waiver of indictment in order to proceed by way of information. Additionally, the Court made inquiry as to what occurred at the defendant's preliminary hearing in the Court of Common Pleas.

On June 16, 1995, the contract attorney forwarded to the Court the original of a document the defendant executed while under the representation of the Public Defender's Office. It is dated December 3, 1992, which was the date of the defendant's preliminary hearing. The document states the following: "This

will confirm that I waive my preliminary hearing in the Court of Common Pleas for a copy of the police report and further, I agree that the State can proceed in Superior Court by the filing of informations in lieu of presenting it to the Grand Jury for indictment." At the signature line for the defendant, there is the name of Richard Thomas Miller. On June 29, 1995, the Court forwarded a copy of this document to the defendant.

I note that the Court of Common Pleas records, and a transcript of the proceedings below evidences, that the defendant, through his attorney, waived his preliminary hearing. This is consistent with the aforementioned document and is consistent with the custom and practice of obtaining copies of police reports by waiving preliminary hearing and proceeding by way of information in lieu of indictment. Police reports are not normally discoverable under Rule 16.

On September 19, 1995, the Court held an evidentiary hearing to determine: (1) if the defendant executed the aforementioned waiver; (2) was the preliminary hearing and indictment, in fact, waived for the police reports; and (3) did the defense receive the reports pursuant to the waiver. At the September 19, 1995 hearing, the December 3, 1992 waiver document was introduced. The public defender investigator specifically recalled meeting with Mr. Miller and reviewing with him the aforementioned waiver document. Additionally, two identical waiver documents involving prior offenses were introduced from the public defender's file. The defendant acknowledged having read the earlier waiver

documents and having signed them. One of these prior offenses ultimately was prosecuted by information in the Superior Court and the defendant pled guilty to a burglary. The public defender's staff and attorneys testified they always review the consequences of the waiver of preliminary hearing and grand jury indictment with each defendant before advising the Court of Common Pleas of a waiver. Even though the defendant questions whether or not he executed the waiver document dated December 3, 1992, I am satisfied he did based upon the investigator's testimony, the defendant's acknowledgement that it looks like his signature, and my comparison of the other documents containing the defendant's signature to the waiver document in question.

Subsequent to the filing of the charging document, the information, the defendant (i) filed a written arraignment entering a plea of not guilty and requesting a jury trial; (ii) entered a plea of guilty and withdrew same for reasons other than jurisdiction; (iii) went to trial and was convicted; and (iv) appealed his conviction.

It is apparent that Mr. Miller, his public defender, his contract attorney, the Department of Justice and the Court operated under the assumption that a waiver of indictment had been filed.

I am satisfied that the records of the Court of Common Pleas, the executed December 3, 1992 waiver document, and the testimony of his then assigned attorneys establish that the defendant waived his right to a preliminary hearing and Grand

Jury indictment in order to obtain a copy of the police report which would not have been obtainable to him through Rule 16 discovery. Because of that waiver, he obtained the police reports. Following same, the case was processed by his attorneys, the Department of Justice, the Court of Common Pleas and the Prothonotary with the understanding that the case would be tried by way of information. A written waiver document has now been produced and filed with the Court.

Based upon the defendant's earlier experience with the criminal justice system and his execution of documents waiving his right to grand jury indictment twice prior to the present case, I find that he knowingly, voluntarily and intelligently waived his right to grand jury indictment by the agreement he reached with the State to obtain copies of the police report. This occurred on December 3, 1992.

The Superior Court's file now contains that document. While it is admittedly a tardy filing it firmly establishes that this defendant knew of and agreed to prosecution by information.

I further find that the defendant acquiesced to the jurisdiction of this Court by participating in all phases of the prosecution from his Rule 10 arraignment through the filing of his appeal.

Under these facts and circumstances, I find that the defendant waived his right to be prosecuted by indictment and submitted himself to the jurisdiction of this Court. I find that the failure to obtain the express waiver was a technical

violation which did not deprive the Court of jurisdiction. Ornelas v. United States, 11th Cir., 840 F.2d 890 (1988). Under these facts, the failure to formalize same should not be a ground for a new trial.

Ground Two.
"Bail being raised for same offense"

The defendant argues that his bond was raised following his initial postconviction proceedings.

This allegation is barred pursuant Rule 61(i)(3) in that the defendant has not provided any excuse as to why this matter was not asserted in the proceedings leading to his conviction, including the appeal, nor has he shown any prejudice arising from the alleged violation.

As to the merits, the defendant's bond had nothing to do with his conviction. Collateral matters not contributing to the conviction cannot provide relief from the conviction under Rule 61.

Ground Three.
"I signed and requested a non-jury trial."

The defendant alleges his rights were violated because he did not want a jury trial. He also argues bias and prejudice on the part of the jury.

Initially, the defendant was scheduled for a jury trial. Then the aforementioned events concerning the Robinson plea and the withdrawal of same occurred.

Later, when his case was scheduled for trial, the defendant indicated his desire to waive a jury trial. At first, the State

SUPERIOR COURT CRIMINAL DOCKET
(as of 10/13/2004)

Page 14

State of Delaware v. THOMAS R MILLER

DOB: 03/25/1958

State's Atty: JAMES W ADKINS , Esq.

AKA:

Defense Atty: ROSEMARY B BEAUREGARD , Esq.

No.	Event Date	Event	Judge
		FILED BY DEF. (SA)	
104	11/07/1994	LETTER TO JUDGE GRAVES FROM ROSEMARY BEAUREGARD RE: RICHARD THOMAS MILLER BRIEF. (LM)	
105	12/16/1994	LETTER TO COURT, FROM DEF. (MB)	
106	05/24/1995	MOTION FOR POST-CONVICTION RELIEF POST CONVICTION RELIEF MOTION # 1 FILED BY DEF. (SA)	
107	05/24/1995	LETTER FROM DEFENDANT TO JUDGE REQUESTING THAT ROSEMARY BEAUREGARD BE ALLOWED TO REPRESENT DEF ON PCR MOTION (SA)	
108	06/01/1995	LETTER FROM SUPREME COURT ENCLOSING RECORD AND MANDATE ON CASE (SA)	
109	06/01/1995	MANDATE AFFIRMED ORDER SIGNED 5/9/95 BY JUSTICE HARTNETT. (SA)	
110	06/16/1995	WAIVER OF INDICTMENT SIGNED BY DEFT. /WAIVER OF PRELIMINARY HEARING SIGNED BY DEFENDANT ON 12/3/92. (LM)	
111	06/16/1995	LETTER TO JUDGE GRAVES FROM ROSEMARY BEAUREGARD RE: ENCLOSING ORIGINAL WAIVER OF PRELIMINARY HEARING (LM)	
112	06/19/1995	LETTER TO DEF. FROM COURT RE: ADVISING DEF. THE UNFILED WAIVER WAS IN HIS ATTY.'S FILE AND ENCLOSING A	GRAVES T. HENLEY

A-3

A-3

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
JUDGE

112

P.O. Box 746
COURTHOUSE
GEORGETOWN, DE 19947

92-12-0044

June 19, 1995

Mr. Richard Thomas Miller
Delaware Correctional Center
P. O. Box 500
Smyrna, DE 19977

Dear Mr. Miller:

I had my staff contact the Attorney General's Office, the Public Defender's Office and the contract attorney to determine if the unfiled waiver was in one of their files.

Per the attached, it was located.

Yours very truly,

THG
T. Henley Graves

THG:kjt
Enclosure
xc: Prothonotary

CERTIFIED
AS A TRUE COPY
ATTEST *[Signature]*
PROTHONOTARY
Per *[Signature]*
CLERK

A-3

A. DEAN BETTS
ROSEMARY B. BEAUREGARD

Betts & Beauregard, P.A.

ATTORNEYS AT LAW
15 SOUTH RACE STREET
P.O. BOX 770
GEORGETOWN, DELAWARE 19947

TELE: (302) 856-7755
FAX: (302) 856-4975

JUN 16

June 16, 1995

The Honorable T. Henley Graves
Superior Court of Delaware
Sussex County Courthouse
Georgetown, DE 19947

CERTIFIED
AS A TRUE COPY
Attest: *[Signature]*
Notary Public
Per: *[Signature]*
Clerk

RE: *State v. Richard Thomas Miller*

Dear Judge Graves:

Per your inquiry, enclosed please find the original Waiver of Preliminary Hearing signed by the above captioned individual.

If you have any questions, please do not hesitate to contact me.

Very truly yours.

BETTS & BEAUREGARD, P.A.

Rosemary B. Beauregard
Rosemary B. Beauregard

RBB/tec

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

~~12-0~~
A-5

THE STATE OF DELAWARE	X	NOS. S92-12-0044 thru 0047
vs.	X	
THOMAS RICHARD MILLER	X	I N F O R M A T I O N
I.D. #92S05488	X	

The Attorney General of the State of Delaware by information makes that THOMAS RICHARD MILLER did commit the following offenses, to-wit:

COUNT 1 - UNLAWFUL SEXUAL INTERCOURSE IN THE FIRST DEGREE - FELONY - S92-12-0044

THOMAS RICHARD MILLER on or about the 29th day of November, 1992, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with another person, Martha B. Pederson, without her consent and the defendant was not the victim's voluntary social companion on the occasion of the crime and had not premitted him sexual intercourse within the previous 12 montsh, in violation of Title 11, Section 775(a)(2) of the Delaware Code.

COUNT 2 - BURGLARY IN THE FIRST DEGREE - FELONY - S92-12-0045

THOMAS RICHARD MILLER on or about the 29th day of November, 1992, in the County of Sussex, State of Delaware, did knowingly enter unlawfully in a dwelling, at night, belonging to Martha M. Pederson, with the intent to commit a crime, Unlawful Sexual Intercourse in the First Degree, therein, and while in the dwelling, he caused physical injury to Martha M. Pederson who was not a participant in the crime, in violation of Title 11, Section 826(2) of the Delaware Code.

14-15 A-5

COUNT 3 - UNLAWFUL SEXUAL PENETRATION IN THE SECOND DEGREE -
FELONY - S92-12-0046

THOMAS RICHARD MILLER on or about the 29th day of November, 1992, in the County of Sussex, State of Delaware, did intentionally place one or more fingers inside the vagina of Martha M. Pederson, without her consent and during the commission of the crime, he caused physical injury to said Martha M. Pederson, in violation of Title 11, Section 771 of the Delaware Code.

KARL HALLER, ESQUIRE
Assistant Public Defender
Pine Street
Georgetown, Delaware

s/CHARLES M. OBERLY, III
ATTORNEY GENERAL

James W. Ollivier
DEPUTY ATTORNEY GENERAL

DATED:

17-4

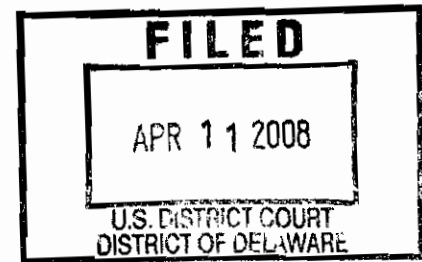
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THOMAS R. MILLER
APPELLANT,

• Cr. A. NOS. S92-12-0044 thru -
• S92-12-0047
• 1:08-CV-137(GMS)
•

V.
STATE OF DELAWARE
APPELLEE.

APPENDIX TO OPENING BRIEF OF
GROUND TWO.



DATED: April 9, 2008

Thomas R. Miller
THOMAS R. MILLER
DCC 1181
PADDOCK RD.
SMYRNA, DEL 19977

Table of Citations to Appendix

Exhibit (B-1) one page supplement report.	1
Exhibit (B-2) search warrant application and affidavit.	1
Exhibit (B-3) one continuation sheet.	1
Exhibit (B-4) Front page of Police report Box 32.	1
Exhibit (B-5) 3 page Hospital report.	1
Exhibit (B-6) one FBI Forensic analysis report.	1
Transcript page B-115.	2
Transcript page p	2
351 A.2d 84 State v. Doe (Del. Super (1976)	2
Exhibit (B-7) one letter from Counsel Beavregard.	3
Transcript page B-155 thru B-157.	3
Transcript page A-128, A-129.	3
Exhibit (B-8) one certified report.	3
Transcript A-79, A-80	3
Mooney v. Hobohan 294 U.S. 103, 112, 55 S.C. 340, 341, 79 L.Ed 79 (1935).	4
Transcript page B-27, 28, 32 and 33.	4
Exhibit B -9 one statement sheet.	4
Transcript page B-113 thru B-117.	5
Transcript page B-115.	5
Deberry v. State Del. Supr, 45 A.2d 744 (1983).	5
Hammond v. State Del. Supr, 569 A.2d 81 (1989).	5
Arizona v. Youngblood 488 U.S. 51, 109 S.Ct 333, 102 L.Ed 2d 281 (1988).	5
Bailey v. State Del. Supr, 521 A.2d 1069, 1090 (1987).	6
Transcript page B-113.	6
Brady v. Maryland 83 S. Ct 1194.	6
Exhibit (B-10) one certified juror sheet, one jury selection sheet.	7
Ibid n. 104, Johnson, Hartford currant, March 20, 1990.	8
Transcript page B-190 thru B-203.	8
Transcript page B-197.	8
State v. Markus cite as 683 A.2d 221 N.J. Super. A.D. (1996).	9
Batson v. Kentucky cite as 106 S. Ct 1712 (1986).	1
Hughes v. State Del. Supr, 490 A.2d 1034 (1985).	1
In State v. Thomas 586 A.2d 250 (1991).	1

Hughes v. State 437 A.2d 559	13
Sexton v. State, Del. Supr, 397 A.2d 540 (1979)	13
Edwards v. State Del. Supr, 320 A.2d 701 (1974)	13
Bennett v. State. 3 storey 36 Del. Supr, 164 A.2d 442, 446 (1960)	13
11 397 A.2d at 544.	13
Hooks v. State, Del. Supr, 416 A.2d 189 204 (1980)	14
State v. Mayberry NJ. Supr,	14-15
Justice Sutherland in <i>Berger v. United States</i> , 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed 1314 (1935)	15
Bennett v. State, Del. Supr, 3 storey 36, 164 A.2d 442, 446 (1960)	15
Jenkins v. State Del. Supr, 413 A.2d 874 (1980)	16

B-1

6 COMPLAINT NC
7692185

CODE

25 Criminal Trespass

At 1816 hrs writer executed a search warrant signed by Judge Boddy @ J.P. Court #3. Writer pick-up def (Miller) @ SCI and transported same to Beebe Medical Center in ref to having samples of Hair, Saliva, and blood taken from the def (Miller) and sent to the F.B.I lab @ a later date and time for analysis. Dr. Angel MD, and Army Register R.N. of Beebe Performed the combings and gathering of evidence.

KARL WALLER, ESQUIRE
Assistant Public Defender
Pine Street
Georgetown, Delaware

DOC #45-78

Miller, Thomas K. B.M. 7/10/55
 5-8 wt 148 Bk Hair BRO Eyes
 who committed unlawful
 sexual intercourse.

SEARCH WARRANT
 APPLICATION AND AFFIDAVIT

STATE OF DELAWARE

DATE OF APPLICATION

COMPLAINT NO.

COUNTY OF Sussex11/30/9276921831

NAME(S) OF AFFIANT(S):

Pt. In Bruce Rittler OF Lewes Police

OF

personally appeared before me, and being duly sworn (affirmed) according to law, depose(s) and say(s) that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or places or in the possession of particular person(s) as described below.

IDENTIFY ITEM(S) TO BE SEARCHED FOR AND SEIZED:

2-Containers of Blood, 1-seamen sample, 1-saliva sample, Samples of head-hair, samples of pubic hair and finger nail samples

SPECIFIC DESCRIPTION OF PREMISES AND/OR PLACE(S) AND/OR VEHICLE(S) AND/OR PERSON(S) TO BE SEARCHED:

The person of Thomas, Richard Miller B.M. 4/11/03 255 171 wt 174 Bk Hair and BRO Eyes Soc. Sec. No 222-50-3515

NAME OF OWNER(S), OCCUPANT(S) OR POSSESSOR(S) OF PREMISES AND/OR PLACE(S) AND/OR VEHICLE(S) AND/OR PERSON(S) TO BE SEARCHED:

See above

VIOLATION OF (Describe conduct or specify statute):

Unlawful sexual penetration, unlawful sexual intercourse, Burglary

PROBABLE CAUSE BELIEF IS BASED ON THE FACTS AND CIRCUMSTANCES SET FORTH IN THE HEREIN ATTACHED "PROBABLE CAUSE SHEET" CONSISTING OF _____ PAGES

Bruce Rittler
 (Signature of Affiant)

OF Lewes Police

9478
 Badge/IDM No.

OF

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 30th DAY OF Nov., 1992

W. F. Boddy
 (Signature of Issuing Authority)

J. P. #3
 (Court)

CONTINUATION SHEET

5 PAGE

2

of 2

6 COMPLAINT NO.

76-92-1831

52 INVESTIGATING OFFICER

Cpl. Miffelin

had been delivered and V. stated that the Def. had been in the residence for about a half an hour to Fort five minutes.

Writer relayed the V. back to her residence once her examination was complete and made arrangements for a resident to stay with same. Several attempts to contact family members were unsuccessful but the manager of the development contacted writer at the V. residence and stated that she would continue to attempt to contact someone.

Writer obtained the clothing that the V. was wearing during the assault, bed linens, pillow cases, the tools that the Def. left behind and the Rape Kit that was completed at the hospital and place same in the evidence locker for processing.

7 NAME (LAST, FIRST, MIDDLE) Person, Martha M		8 RACE, SEX, E.O. AGE W F M 79		9 DOB 050115		10 RESID PHONE UNK		11 BUS PHONE UNK	
12 LOCATION OF INCIDENT #12		13 RESIDENT <input checked="" type="checkbox"/> FULL <input type="checkbox"/> NON <input type="checkbox"/> UNK		14 FULL-TIME OVER/SCHOOL Retired		16 GRID 200124		17 SECT 7	
22 REPORTED DAY DATE TIME Sun 112992 1730		23 OCCURRED DAY DATE TIME Sun 112992 1700		24 INVOLVEMENT ALCOHOL <input type="checkbox"/> DRUGS <input type="checkbox"/> COMPUTER <input type="checkbox"/>		20 TYPE PREMISE Residential		21 LOC	
25 CRIME OR INCIDENT TITLE & SECTION Unlawful sexual Penetration T-11-772 (1)				26 UCR CLASS 1122-10		27 SUP CODE		28 CRIM ACTIVITY	
29 4-F-14 SENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO N/A		30 GB <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		31 POINT OF ENTRY E/side of Residence		32 NATURE OF INJURIES None		33 WEAPONS MEANS/ATTACK W	
INDICATE RELATIONSHIP TO INVESTIGATION: W-1. W-2 WITNESS, NI NOT INTERVIEWED, RP REPORTING PERSON, P PARENT									
34 NAME (L, F, M) RP-1 Bunting, Paola W-2 Wright, James B.M. M.H. 100521		35 ADDRESS UNK Stockley Georgetown DE Apt 8 Halilina Core Lewes		36 PHONE UNK UNK 645-5167					
37-1 SUSPECT <input checked="" type="checkbox"/> DEFENDANT (L, F, M) Miller Thomas, Richard									
37-2 TYPE ARREST <input type="checkbox"/> ON VIEW <input type="checkbox"/> SUMMONS <input type="checkbox"/> WARRANT		37-3 V.O. /		37-4 RACE, SEX, E.O. AGE B M M 39		37-5 DOB 032558		37-6 RESIDENT <input type="checkbox"/> FULL <input type="checkbox"/> NON <input type="checkbox"/> UNK	
37-7 ADDRESS 25 Shady Nook Trailer Pk		37-8 DESCRIPTION 5-8 HT 140 WT		37-9 ARMED WITH SS #222-50-3515		37-10 RESIDENT <input type="checkbox"/> FULL <input type="checkbox"/> NON <input type="checkbox"/> UNK			
38-1 SUSPECT <input type="checkbox"/> DEFENDANT		38-2 TYPE ARREST <input type="checkbox"/> ON VIEW <input type="checkbox"/> SUMMONS <input type="checkbox"/> WARRANT		38-3 V.O. /		38-4 RACE, SEX, E.O. AGE A		38-5 DOB	
38-6 RESIDENT <input type="checkbox"/> FULL <input type="checkbox"/> NON <input type="checkbox"/> UNK		38-7 ADDRESS N		38-8 DESCRIPTION /		38-9 ARMED WITH			
39-1 YEAR MAKE MODEL BODY COLOR(S) IDENTIFYING CHARACTERISTICS N/A N/A									
40-1 PROPERTY TYPE 40-2 STOLEN - S, DAMAGED - D, RECOVERED - R, SEIZED - Y 40-3 N/A 40-4 N/A 40-5 N/A									
41-1 TYPE N/A									
42 DRUG QUANTITY N/A									
43 DRUG MEASURE N/A									
44 DATE RECOVERED N/A									
45 VALUE DAMG 0									
46 VALUE REC 0									
47 VALUE STOLEN 0									
48 CONTINUATION OF ABOVE ITEMS Unlawful Sexual intercourse T-11-775 (a)(2) 1125-11									
49 DET NOTIFIED N/A									
50 REFERRED TO N/A									
51 SUPERVISOR APPROVAL [Signature]									
52 EXCEPTIONAL CLEAR <input type="checkbox"/> DEATH SUSPECT <input type="checkbox"/> PROSECUTION DECLINED <input type="checkbox"/> EXTRADITION DECLINED									
53 STATUS <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> ARREST - JUV <input type="checkbox"/> PEND - INACTIVE <input type="checkbox"/> SERVICE CLEAR									
54 NO V COOPERATION <input type="checkbox"/> JUV NO CUSTODY <input type="checkbox"/> ADMIN SANCTION									
55 SOLVABILITY FACTORS <input type="checkbox"/> WIT <input type="checkbox"/> MO <input type="checkbox"/> EVIDENCE <input type="checkbox"/> TRAC STOLEN <input type="checkbox"/> SUSP VEH ID'ED <input type="checkbox"/> SUSP ID'ED									
56 OFFICE FOLLOW-UP CLOSE [Signature]									

300 1020 562 11/24/92
 PEGGSON, MARTHA M
 170.715 3763745
 DR. E.B. PHYS FAM. DR.
 14 HOLLING COVE
 LEWES, DE 19958
 000 000 0000

BEEBE EMERGENCY CENTER

Route 26 (Three miles West of Canal Bridge)
 Millville, Delaware 19945-(302) 539-8450



INSTRUCTIONS TO THE PATIENT: The examination and treatment you have received in the Emergency Department have been rendered on an emergency basis only, and is not intended to be a substitute for or an effort to provide complete medical care. Because it is impossible to recognize and treat all elements of injury or illness in a single Emergency Department visit, it is important that you let your follow-up doctor check you again, and that you report to him any new or remaining problems at that time. X-rays and electrocardiograms interpreted initially by the Emergency Department physician will be officially read by the appropriate specialist. If there is a difference you will be notified. Meanwhile, follow instructions as indicated below.

☐ CUTS ABRASIONS OR BURNS

- ___ 1. Keep cut or stitches clean, dry and covered.
- ___ 2. See your doctor for any of the following signs of infection: swelling, red streaking, drainage or pus, or fluid, severe or persistent pain or fever.
- ___ 3. Make an appointment with your doctor to have stitches removed or wound examined in ___ days.
- ___ 4. Change the bandage after 24-48 hours and as necessary thereafter.
- ___ 5. Do not remove bandage until seen by your doctor.
- ___ 6. Stitches will absorb and do not need to be removed.
- ___ 7. You have been given a booster dose of tetanus toxoid. These boosters are given routinely now every 5 years, or by special order of a doctor.

☐ HEAD INJURY

- ___ 1. Notify your doctor immediately for any of the following:
 - a. Eyes that move independently or pupils that are unequal in size.
 - b. Bizarre behavior, change in walking patterns, weakness or numbness in arms or legs.
 - c. Persistent vomiting or high fever.
 - d. Unusual drowsiness, persistent headache or dizziness.
 - e. Bleeding or discharge from ears or nose.
 - f. Loss of consciousness or convulsions

NOTE: Waken patient hourly for the first 12 hours to check for these signs.

☐ CULTURES

- ___ 1. If throat culture is positive, you will be notified.
- ___ 2. For all other cultures you will be notified if treatment needs to be changed.

☐ SPRAINS OR SOFT TISSUE INJURIES

- ___ 1. Elevate the injured part to reduce pain and diminish swelling for ___ day(s).
- ___ 2. Use ice packs or cold compresses for ___ day(s).
- ___ 3. Use heat in the form of hot soaks, hot compresses, hot water bottle or heating pad (10w heat) for 20 minutes every 2-4 hours after ___ day(s).
- ___ 4. Keep the elastic bandage or sling on for ___ days or until pain is relieved. You may remove and rewrap it as necessary. Be sure that it is snug, but not tight. Remove during rest.
- ___ 5. Notify your doctor immediately if the injured area becomes discolored, cold or numb.
- ___ 6. Use crutches for support for ___ days.
- ___ 7. Restrict activity of injured area for ___ days.

☐ FEVER TREATMENT

- ___ 1. Drink plenty of fluids.
- ___ 2. Bed rest for ___ days.
- ___ 3. Take ___ aspirin and/or ___ tylenol every ___ hours.
- ___ 4. Take temperature every ___ hours.
- ___ 5. Light diet (soups, jello, clear liquids) for ___ day(s).
- ___ 6. Sponge bathe with tepid water for temperature of 104 or more.

☐ BACK OR NECK INJURY

- ___ 1. Use heat or cold on the injured area whichever seems to help the most.
- ___ 2. Bed rest for ___ days, or until improved.
- ___ 3. Avoid positions and movements that make the pain worse.
- ___ 4. Gentle but firm massage will help clear the soreness.

☐ CAST CARE

- ___ 1. Cast will be damp for 24 hours. Do not apply pressure or bear weight during this period.
- ___ 2. Keep elevated for 24 hours.
- ___ 3. Call your physician or return to Emergency Department for the following:
 - a. Severe pain or pressure in cast.
 - b. Increasing numbness or coldness of fingers/toes.
 - c. Excessive swelling.
 - d. Bluish color of nails.
- ___ 4. Don't walk on cast.
- ___ 5. Don't remove padding or poke anything down cast.

☐ GENERAL INSTRUCTIONS

- ☒ 1. Make an appointment to see your doctor in ___ days or sooner if you feel worse.
- ___ 2. You may take aspirin or similar medication for pain.
- ___ 3. Take prescription as directed.
- ___ 4. No school or work for ___ days.

INSTRUCTIONS: If your family physician has questions concerning your treatment he may contact the Emergency Department.

E. R. Physician

Inst. Sheet Given By:

I acknowledge receipt of the above instructions. I understand that I have had emergency treatment only and that further evaluation and/or treatment may be necessary.

Attending Physician

Patient Signature (Or Responsible Person)

01/15
PHYS

Exhibit A-3 B 5

424 S.
Lowe
302

19958
000-0000

PATIENT NAME: <u>Person, Mary May</u>				EMERGENCY ROOM <u>9</u>			
TRIAGE NURSE ASSESSMENT				PRIORITY <input type="checkbox"/> C <input type="checkbox"/> E <input checked="" type="checkbox"/> U <input type="checkbox"/> R1			
TIME <u>1755</u>	AGE <u>85</u>	SEX <input type="checkbox"/> M <input checked="" type="checkbox"/> F	ACCOMPANIED BY <input checked="" type="checkbox"/> RESCUE <input type="checkbox"/> AMBULATORY	<input type="checkbox"/> SELF <input type="checkbox"/> FRIEND	<input type="checkbox"/> OTHER <input type="checkbox"/> SPOUSE <input type="checkbox"/> PARENT	TETANUS HX: <input type="checkbox"/> WITHIN 5 YRS <input type="checkbox"/> OVER 5 YRS	PRIMARY PHYS. <input type="checkbox"/> NEVER <input type="checkbox"/> UNSURE <u>Saliba</u>
TEMP <u>96.6</u>	PULSE <u>88</u>	RESP <u>26</u>	B/P <u>210/110</u>	LMP	WT	ACCIDENT <input type="checkbox"/> HOME <input type="checkbox"/> WORK	ALLERGIES <input type="checkbox"/> AUTO <input type="checkbox"/> MC
GENERAL APPEARANCE COLOR <input type="checkbox"/> NORMAL <input type="checkbox"/> JAUNDICED <input type="checkbox"/> PALE <input type="checkbox"/> CYANOTIC <input type="checkbox"/> NAIL BEDS <input checked="" type="checkbox"/> FLUSHED <input type="checkbox"/> CIRCUMORAL				MENTAL STATUS <input type="checkbox"/> CONS. <input type="checkbox"/> LETH. <input checked="" type="checkbox"/> CONFUSED <u>disoriented</u> <input type="checkbox"/> UNCON. <u>MIN.</u> <input type="checkbox"/> ORIENTED YES <input type="checkbox"/> NO <input type="checkbox"/> FOR PL. TIME		RESP <input type="checkbox"/> NORMAL <input checked="" type="checkbox"/> RAPID <input type="checkbox"/> STRIDOR <input type="checkbox"/> SHALLOW <input type="checkbox"/> SLOW <input type="checkbox"/> AUDIBLE WHEEZE <input type="checkbox"/> DEEP <input type="checkbox"/> LABORED	
SKIN <input type="checkbox"/> WARM <input type="checkbox"/> CLAMMY <input type="checkbox"/> RASH <input type="checkbox"/> DRY <input type="checkbox"/> EDEMA <input type="checkbox"/> OTHER <input checked="" type="checkbox"/> COOL <input type="checkbox"/> ECCHYMOSIS				PULSE: <input type="checkbox"/> REGULAR <input type="checkbox"/> WEAK <input checked="" type="checkbox"/> IRREGULAR <input checked="" type="checkbox"/> STRONG		VISUAL ACTIVITY (IF NEC.) <u>N/A</u> RIGHT E LEFT E	

CHIEF COMPLAINT (MECHANISM OF INJURY)
pt found in bed with pt. cloths are pulled up
underwear on. female beside pt. on bed when
found by st. police in va. heard police.
 ASSESSMENT OF CHIEF COMPLAINT
pt. disoriented & unable to answer questions @
this time.

TREATMENT PRIOR TO ARRIVAL	CURRENT MEDS.
PMH <u>hypertension</u> <u>met</u>	<u>triamterene / HCTZ 50mg/50mg qd.</u> <u>metoprolol 250mg tid.</u> <u>haldol 0.25mg qd.</u> <u>cipro 500mg bid.</u>
TRIAGE INTERVENTION <input type="checkbox"/> SPLINTS <input type="checkbox"/> ST DRESSING <input type="checkbox"/> ICE <input type="checkbox"/> CERV. COLLAR	<input type="checkbox"/> LAB <input checked="" type="checkbox"/> X-RAY <input type="checkbox"/> OTHER

REPEAT VS.	TRIAGE NURSE SIGNATURE <u>Lynne Martin</u>
------------	---

NURSING DIAGNOSIS <input checked="" type="checkbox"/> ANXIETY — BOWEL ELIMINATION, ALT. IN: — COMFORT, ALTERATION IN: — FLUID VOLUMES, ALT. IN: — GAS EXCHANGE, ALT. IN: — INFECTION, POTENTIAL / ACTUAL — URINARY ELIMINATION, ALT. IN:	— NON-COMPLIANCE (SPECIFY) — PHYSICAL MOBILITY, IMPAIRED: — SENSORY / PERCEPTUAL ALT. IN: (SPECIFY) VISUAL, AUDITORY, GUSTATORY, TACTILE, OLFACTORY — SKIN INTEGRITY, IMPAIRED: — POTENTIAL FOR: (SPECIFY) — THERMOREGULATION, INEFFECTIVE: — THOUGHT PROCESS, ALT. IN:	GOAL EVAL	INIT.	KEY
				M = GOAL MET N = GOAL NOT MET
				* = EVAL. IN NURSES NC
				— TISSUE PERFUSION, ALT. IN: (SPECIFY) RENAL, CEREBRAL, CARDIOPULMONARY, PERIPHER GASTROINTESTINAL — OTHER:

TIME IN TREATMENT AREA <u>1755</u>	RN SIG. <u>Lynne Martin</u>	B-83	MEDICAL RECORD
---------------------------------------	-----------------------------	------	----------------

BEEBE MEDICAL CENTER

EMERGENCY RECORD

REG DATE: 11/29/92 REG TIME: 18:16 DSCH TIME: MED REC #: 800 020 562 PRICE ADM: 0/00/

PT NAME : PEDERSON, MARTHA M PHONE: 000-
 PERM ADDR : 14 HULING COVE LEWES, DE 19958
 TEMP ADDR :
 BIRTH DATE : 5/01/15 AGE: 77Y SEX: F M/S: S TEMP PHONE:
 BIRTH PLACE: RACE: W SOCIAL SEC NO: 000000000
 OCCUPATION: EMPLOYER: REL:
 PAT ACCT #: 3763745 LIVING WILL: N PRIMARY PHYSICIAN:
 ADMITTED BY: BET
 NEAREST RELATIVE: PHONE: 000-
 ADDR: 00000
 INSL NAME : 000 POLICY #: GROUP:
 INSL NAME : POLICY #: GROUP:
 00000

**** AUTHORIZATION FOR EMERGENCY TREATMENT ****

- THIS IS TO CERTIFY THAT THE UNDERSIGNED HEREBY CONSENTS TO AND AUTHORIZES THE ADMINISTRATION AND PERFORMANCE OF ALL DIAGNOSTIC PROCEDURES AND/OR SUCH MEDICAL, SURGICAL OR X-RAY TREATMENT, WHICH IN THE JUDGEMENT OF THE TREATING PHYSICIAN OR HIS AUTHORIZED AGENT MAY BE CONSIDERED NECESSARY OR ADVISABLE.
- NO GUARANTEE HAS BEEN MADE AS A RESULT OF TREATMENTS OR EXAMINATION IN THE HOSPITAL.
- THE UNDERSIGNED UNDERSTANDS THAT A PERSONAL PHYSICIAN IS TO BE SELECTED BY OR ON BEHALF OF THE PATIENT UPON ADMISSION IF HOSPITALIZATION OR FURTHER TREATMENT IS REQUIRED.
- THE UNDERSIGNED HAS READ THE ABOVE AUTHORIZATION AND UNDERSTANDS THE SAME.

DATE _____ TIME _____ A.M.
 P.M. SIGNED _____
 PATIENT

WITNESS _____ OR _____
 AUTHORIZED PERSON

RELATIONSHIP TO PATIENT _____

AUTHORIZATION MUST BE SIGNED BY THE PATIENT,
 OR BY AN AUTHORIZED PERSON IN THE CASE OF
 A MINOR OR WHEN PATIENT IS PHYSICALLY OR
 MENTALLY INCOMPETENT.



FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

To: Mr. Jack Warrington
City of Lewes
Director of Public Safety
Lewes Police Department
Post Office Box 227
Lewes, Delaware 19958

Date: June 9, 1993

FBI File No. 95A-HQ-1042998

Lab No. 21231024 S WP RQ

Reference: Communication dated December 30, 1992

Your No. 76-92-1831

Re: THOMAS R. MILLER - SUSPECT;
MARTHA M. PEDERSON - VICTIM;
RAPE/BREAKING AND ENTERING

Specimens received: December 31, 1992

Specimens personally delivered by Sergeant Steve Swain on
December 31, 1992:

ITEMS FROM VICTIM:

Q1-Q2	Vaginal swabs
Q3-Q4	Vaginal slides
Q5-Q6	Oral swabs
Q7-Q8	Oral slides
Q9	Genital swabbings
Q10	Pubic hair combings
Q11	Slip
Q12	Gown

B-6

Q13 T-shirt

K1 Blood sample from victim

K2 Head hair sample from victim

K3 Pubic hair sample from victim

ALSO SUBMITTED:

Hospital report

ITEMS FROM SUSPECT:

Q14 Pubic hair combings

Q15 Shorts

K4 Blood sample from suspect

K5 Head hair sample from suspect

K6 Pubic hair sample from suspect

K7 Saliva sample from suspect

ITEMS FROM CRIME SCENE:

Q16-Q19 Four pillowcases

Q20 Sheet

Q21 Mattress cover

Result of examination:

The known blood samples were grouped as follows:

SPECIMEN(S)

RESULTS

K1 PEDERSON

"PGM 2+, Hp 1, Gc 1F-1S"

K4 MILLER

"Hp 2-1, Gc 1F"

An attempt to further characterize specimen K4 was inconclusive.

B-6

No blood or semen was found on specimens Q1 through Q9, Q11 or Q12.

No hairs like the pubic hairs of the suspect were found in specimen Q10.

No hairs like the pubic hairs of the victim were found in specimen Q14.

The hairs and fibers have been removed from the remainder of the submitted items and have been preserved for possible future comparison. In view of the fact that the suspect was arrested in the victim's bed with the victim, no further hair or fiber examinations are being conducted.

The submitted items will be temporarily retained in the FBI Laboratory until picked up by a representative of your office.

A. DEAN BETTS
ROSEMARY B. BEAUREGARD

Betts & Beauregard, P.A.

ATTORNEYS AT LAW
15 SOUTH RACE STREET
P.O. BOX 770
GEORGETOWN, DELAWARE 19947

TELE: (302) 856-7755
FAX: (302) 856-4975

January 18, 1994

Mr. Thomas Miller
Delaware Correctional Center
P. O. Box 500
Smyrna, DE 19977

Dear Thomas:

I am in receipt of your letter dated January 13, 1994. At this point and time, considering the comments you made in this letter, I must assume that you believe that a fraud has been committed upon you based on the fact that you believe the transcripts supplied to you are not accurate transcripts of the proceedings that took place before the court. Is it your position that somebody has made up what is transcribed in these transcripts? If that is your position, please advise as to specifics. Eileen Kimmel, who is the court reporter, has attached a certificate to each of the transcripts indicating that these were the true and accurate transcript of the proceedings that took place on those dates. Ms. Kimmel has been a court reporter for many years with the Superior Court and is sworn to accuracy in these reports.

My understanding from your letter is that you felt that the Robinson plea that was entered was tainted based on the fact that you did not have an FBI report until the day of your plea. ~~It is my understanding that the FBI report has found that there was no evidence of semen presence on Mrs. Pederson and therefore there is inconclusive evidence medically as to whether penetration occurred. Please be advised that an inconclusive report does not indicate that you did not have intercourse with Mrs. Pederson, it merely states there is nothing medically evident to indicate that you did. Once again it comes down to your word against Mrs. Pederson's word.~~

Basically it is your belief that the description of the crime given by the prosecutor was inaccurate based on information you had subsequently obtained. If Mr. Barnett was aware of the information you have spoken of prior to your plea, and if he gave you false information which you relied on to take that plea, then there maybe some basis for withdrawing your plea. At this point it would seem that everything you have raised in your letter was information that was obtained after the plea was entered either through contact by you with Mrs. Pederson or by your counsellor with Mrs. Pederson. Is this a correct assumption on my part?

~~Handwritten mark~~
A-5

P R O C E E D I N G S

MR. ADKINS: Your Honor, the next case we would like to take is State versus Richard T. Miller. The Information is Thomas Richard Miller.

Mr. Miller is represented by Mr. Barnett. We have been able to enter into a Plea Agreement whereby it is my understanding that the defendant will be pleading guilty to a lesser-included offense of Count 1 of the Information, which will be unlawful sexual intercourse in the second degree. He will also be pleading guilty to Count 2, burglary in the first degree. We will be dropping the remaining charge, Count 2, unlawful sexual penetration in the second degree. We are asking for a presentence investigation. I tender to the Court the original Plea Agreement signed by all parties.

THE COURT: Place the defendant under oath.

(Whereupon, the defendant, THOMAS R. MILLER, was duly sworn.)

MR. BARNETT: Good morning. The Court will pardon my speech this morning. I have an infected jaw, and it is a little swollen. So I will try to speak clearly.

I went through the Plea Agreement which has

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1 Q Are you aware whether or not Dr. Angel
2 observed that and noted that?

3 A I believe that Dr. Angel did note that he saw
4 a small laceration in that area.

5 Q Did he note any bleeding in that area?

6 A I don't know. I would have to read his
7 report.

8 Q Do you remember your testimony in another
9 proceeding yesterday --

10 A . Yes

11 Q -- when you testified that, in fact, he had
12 not noted that bleeding? LIED

13 MR. ADKINS: May we approach, please?

14 THE COURT: I am going to sustain the
15 objection. If she wants to refresh her recollection
16 through documents, or things of that nature, she may do
17 so.

18 MR. ADKINS: I prefer to approach.

19 (Whereupon, counsel approached the bench
20 and the following proceedings were had out of
21 the hearing of the jury:)

22 ~~MR. ADKINS:~~ I do not know how this should be
23 handled, but I can tell you that this witness'

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LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

1 reluctance to say anything whatsoever about what the
2 doctor saw is because I instructed her today that that
3 whole side of the report is out and she cannot mention
4 it. I told her she cannot mention it, and I know that
5 that is what she is struggling with right now.

6 THE COURT: I will take the jury out and tell
7 her that it is cross-examination and that if she needs
8 to refer to any of those, she may do so. And you are
9 going to take your risk if she answers something you do
10 not want.

11 MR. ADKINS: *✓ why shouldn't she* I also told her that she could
12 not say the words "sexual assault" or "rape kit". So
13 she has a whole list of things that she is thinking she
14 is not supposed to say, pursuant to the Court's ruling,
15 and she is trying to decipher this as the questions
16 come.

17 THE COURT: Let me ask you this. What you
18 are trying to get in is that Dr. Angel's report does
19 not say any --

20 MS. BEAUREGARD: Blood. Which is consistent
21 with her report.

22 THE COURT: I understand that. But a report
23 unanswered. I understand you are getting into that

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1 area.

2 MS. BEAUREGARD: My preference is to refresh
3 her memory based on her sworn testimony yesterday,
4 which I attempted.

5 THE COURT: To refresh somebody's
6 recollection, you usually put something before them.

7 MR. ADKINS: The last thing I want her to say
8 is, "I was told I couldn't say this in front of this
9 jury." I do not need her to blurt that out.

10 (Whereupon, counsel returned to the trial
11 table and the following proceedings were had
12 in open court:)

13 THE COURT: Ladies and gentlemen, I am going
14 to ask you to go in. Do not even sit down. If you go
15 in there and walk around the table twice, we will be
16 ready.

17 (Whereupon, the jury returned to the jury
18 room and the following proceedings were had
19 in open court:)

20 THE COURT: Counsel have basically made the
21 Court aware that based upon the rulings yesterday, you
22 have been advised not to say certain things, such as
23 the rape kit and to mention sexual assault. The direct

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1 to the defendant, in the weighing and balancing, that there is
2 no need for you to have those characterizations.

3 MR. ADKINS: In connection with that, Your Honor, I
4 stipulated to an F.B.I. report, basically that there was no
5 semen found, that type of thing, and I am not sure whether that
6 rape kit is mentioned in that.

7 THE COURT: Well, the mentioning of that I don't have
8 a problem with, because that is the purpose of the rape kit,
9 for later analysis. What I don't want in my ruling of what is
10 coming in as far as the historical hearsay, the rape kit to add
11 upon the significance of anything. ~~The State has already~~
no physical evidence proof
12 agreed that the sexual assault diagnosis won't come in so I
13 guess the majority part of the door is open as to those areas
14 in Johnson, and Exhibit Number 1 as to my ruling under 403
15 limiting the introduction of 2, and I am only referring to the
16 top page of 2. I haven't looked at anything else. That is
17 what we have used.

18 Are we all on the same page?

19 MS. BEAUREGARD: Your Honor, I think they did refer
20 to some times on Page --

21 THE COURT: Times are fine, and things of that
22 nature. Times are pertinent, times are relevant, they are
23 relevant to my ruling and relevant to the jury for purposes of
24 making a final determination.

A-129

1 And, Counsel, if you would like -- I haven't seen one
2 -- but if you want me to prepare an instruction concerning any
3 of these rulings you can consider it. I am not saying I will,
4 I am not saying I won't. I am just basically saying the Court
5 will entertain them, some cautionary instructions.

6 MS. BEAUREGARD: Can we have some clarification as to
7 Document Number 1, Your Honor, and by that I am referring to
8 the rape kit.

9 THE COURT: Yes.

10 MS. BEAUREGARD: Your Honor has ruled that all of
11 that will be admissible --

12 THE COURT: Except the title at the top.

13 MS. BEAUREGARD: Except for the top part. And that
14 is on the basis of a medical document, a medical record?

15 THE COURT: It is based on the three hearsay
16 exceptions that I find firmly rooted, and that is 1, 2 and 4 of
17 803.

18 *WAS NO PENETRATION IT'S NOT*
I didn't get the exact time penetration is mentioned.
19 She said she took this immediately thereafter, and therefore I
20 think this is includable because the penetration would be
21 important medical diagnosis and treatment. The fact that she
22 states these other things are more important to 1 and 2 as
23 opposed to medical treatment.

24 MS. BEAUREGARD: Thank you for that clarification.

NURSE REPORT

4:55 PM

B-1

Joint - reviewed - Courts relying
on prev cited
of Counsel

reports made by
medical - admissible
Joint is satisfied with testimony of qualified witnesses - subject to editing
last compelling witness
Sister

Joint Exhibits 5:03 AM.
1 - Report - Rape Kit - except Top
2 - Report - & R - Beebe Hospital

Sexual Assault Form - not to go before jury
Portion on left side of F

2 - Needs editing / white out
Document should not come in itself
just testimony

Rape Kit should not be mentioned

Sexual Assault Diagram - not to come in

Motion to Dismiss so be heard
at 8:45 AM.

NURSE WRITE REPORT

A-79

1 Court.

2 THE COURT: Do you have the person who took that
3 medical record?

4 MR. ADKINS: What we have, Your Honor, is registered
5 nurse, Lynn Morin, who has signed each of the handwritten pages
6 of this medical record.

7 On the first page, "Patient found in bed."
8 "Patient's clothes pulled up." "No underwear on." "Male
9 beside patient on bed when found by police."

10 THE COURT: The pertinent question, Mr. Adkins, is
11 the hearsay coming from the complainant?

12 MR. ADKINS: Okay.

13 THE COURT: What was the mechanism where they are
14 getting this from? Is he getting this from the police or
15 somewhere else?

16 MR. ADKINS: I think the first page is from the
17 police. I will drop my application on that.

18 THE COURT: I think if you are going to consider it
19 under 4 you have to do it from her to a medical treater.

20 MR. ADKINS: That is correct.

21 The second page, this is in the left-hand column,
22 there is a quotation at the top, "I was raped." From my
23 knowledge and information (this was actually handwritten by Dr.
24 Angel., We tried to serve Dr. Angel but were unable to because

✓ BY THE DOCTOR.

NURSE WRITTEN REPORT
PREC. C. & ST.

A-80

1 he has gone on a two and a half to three week continuing
2 medical education trip. Dr. Angel is not here. Lynn Morin,
3 who signed this medical document, registered nurse, she
4 actually heard Ms. Pederson say, "I was raped," because she was
5 there with the doctor the whole time.

6 The other note here of the doctor deals with, well,
7 for example, "Genitalia. Superficial lacerations over
8 posterior fascia," which is the area between the vagina and the
9 rectum. These notes, this handwriting, is actually Lynn
10 Morin's. *HEARSAY, SHE WRITING REPORT HERSELF*

11 This part saying, "Patient now more coherent, able to
12 explain what happened," --

COURT DESCRIPTION
13 THE COURT: Mr. Adkins, I am going to cut you off. I
14 think on this one, I am going to listen to the witnesses, see
15 if they stand the test of cross examination, and then make a
16 ruling on that. That will take place outside of the jury. I
17 am uncomfortable with the factual pattern that I have got right
18 now, as being able to make a ruling. I would like to know the
19 circumstances, the emotional state of the declarant, and things
20 of that nature before making a decision on that.

21 MR. ADKINS: May we do that prior to starting, call
22 this witness in for questioning?

23 THE COURT: Well, we may as well let the jury go
24 then, it is 3:30, have them come back tomorrow, because it

B-27

1 much younger. This person comes to No. 14 Huling Cove
2 and gets into that apartment with Miss Pederson
3 deceptively by saying that he is looking for someone
4 else. He refuses to leave. The dinner comes from the
5 Moose Lodge. He takes the dinner.

6 Then he rolls Miss Pederson in the wheelchair
7 into the bedroom. He has her in the bed with her
8 clothes pulled up, and he is completely naked, and he
9 penetrates her vagina with his penis. That is that man
10 over there (indicating). *PROSECUTOR LIED THIS WHOLE
STATEMENT (REASON) POLICE AND NURSE
LIED SHE ALSO WRITTEN REPORT.*

11 What are the charges in this case? Count 1,
12 unlawful sexual intercourse in the first degree.

13 "Thomas Richard Miller, on or about 29th
14 day of November, 1992, in the County of Sussex,
15 State of Delaware, did intentionally engage in
16 sexual intercourse with another person, Martha
17 Pederson, without her consent, and the defendant
18 was not the victim's voluntary social companion
19 on the occasion of the crime and she had not
20 permitted him sexual intercourse on the previous
21 twelve months, in violation of Title 11, Section
22 775(a)(2) of the Delaware Code."

23 Count 2, burglary in the first degree:

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1 "Thomas Richard Miller, on or about the 29th
2 day of November, 1992, in the County of Sussex,
3 State of Delaware, did knowingly enter unlawfully
4 in a dwelling at night belonging to Martha *The time was 3:15 P.M.*
5 Pederson with intent to commit a crime, unlawful
6 sexual intercourse in the first degree, while
7 therein, and while in the dwelling, he caused *no*
8 *physical injury again he (PROS) LIED*
physical injury to Martha Pederson, who was not
9 a participant in the crime, in violation of Title
10 11, Section 826(2) of the Delaware Code."

11 The State is going to prove this to you
12 beyond a reasonable doubt, beyond any shadow of a
13 doubt, with *There's no evidence period, again LIED TO JURY*
overwhelming evidence. We are going to
14 call the sister of Martha Pederson, Alice Bickling, to
15 the stand. She is going to tell us how old Martha
16 Pederson was as of November 29th, and she is going to
17 tell us another fact. She is going to tell us that her
18 sister did not survive to the date of this trial. She
19 died on September 16, 1993. But the prosecution did
20 not die. The charges did not die.

21 *again no* We are going to show you overwhelming
22 *evidence,* evidence, despite the fact that Miss Pederson is now
23 dead. Miss Bickling will be able to tell you a little

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1 She interviewed her for the purposes of
2 medical diagnosis and treatment and gathering
3 information for the doctor. She helped examine her.
4 She saw a reddened area around Miss Pederson's neck.
5 She saw a small laceration in the -- I am not too good
6 with medical terms -- perirectal area. Miss Morin will
7 be able to explain what that is. An area in between
8 the vagina and the rectum.

9 She had to interview her about things like
10 penetration. Miss Pederson told her that her vagina
11 was penetrated. That is what sexual intercourse is,
12 penetration of the penis into the vagina. It is
13 penetration, and that is what we have in this case.
14 There does not have to be ejaculation; just
15 penetration.

16 As a matter of fact, when Miss Morin was
17 interviewing Miss Pederson, she was asked about whether
18 there was ejaculation by that man (indicating). She
19 said she was not sure about that. Samples were taken
20 -- we will tell you this right up front -- and sent to
21 the F.B.I. We are stipulating to an F.B.I. report in
22 this case. There was no semen found on the vaginal
23 swabs.

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OFFICIAL COURT REPORTER

B-33

1 But that is not pertinent to the fact of
2 whether there was penetration. Miss Pederson said that
3 there was penetration. He was practically caught in
4 the act. That there is no semen makes no difference.
5 He did not get to the point of ejaculating semen,
6 apparently, into this lady's vagina.

7 As the Judge said, just use your common
8 sense, and at the end of this case, you will have no
9 doubt whatsoever that this man is guilty as charged of
10 both counts and that he violated this elderly lady in
11 the last years and in the calm and peace of her life.

12 Come back and send a message to him with a guilty
13 verdict that says, "Yes, we know beyond any reasonable
14 doubt that you did this despicable act."

15 Thank you.

(PROS) LEADING JURY
WITH FALSE INFORMATION
TELLING THEM TO FIND ME
GUILTY BEFORE I'M TRIED

16 MS. BEAUREGARD: I would reserve my right to
17 make my opening statement at the close of the State's
18 case.

19 THE COURT: Ladies and gentlemen, what that
20 basically means is that both of the attorneys have the
21 opportunity to talk to you. The defense has the
22 opportunity to talk with you at this point in time, or
23 they can wait until the end of the State's case and

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B-9

Greater Pottstown Counseling Service

Pennsylvania Center

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(A Non-Profit Organization)

DIRECTOR

Rev A. Smith, Sr. D. Min

"Perfect Love Casteth Out Fear" — 1 John 4:18b

Delaware Center

P.O. Box 272, 337 Highway One
Lewes, Delaware 19958
(302) 645-6868

July 2nd, 1993

Mr. Charles Oberly, III
Attorney General
State Office Building
802 N. French Street
Wilmington, Delaware 19801

COPY

RE: Thomas Miller

Dear Mr. Oberly:

I am writing to you again, because I have come to believe you are a fair man. I am beginning to believe that truth and justice are being over-looked in the effort to get a conviction. I feel it is the Attorney General's responsibility to prove people innocent as well as to prove them guilty. I feel truth is what needs to be found.

From my observations of some of the individuals who hold the position of Dupty Attorney General, they could care less about the truth. If an individual is charged, guilty or not, they are going to convict them. If they cannot convict them, they will keep them in prison for months longer than necessary to prove their point.

Thomas Miller, in my opinion, is one of these individuals who is not being treated fairly. Information was with-held from him until after he was sold in the court room a plea.

In the group therapy which I conduct, Thomas said he was not going to accept any plea because he was innocent. After his return from court, he said he was pressured and tricked by his own attorney and the AG into accepting a plea of ten years. After he accepted the plea, he was given his copy of the FBI Report, which said no evidence was found. Mr. Thomas is charged with rape and breaking and entering.

I did not know what to believe, so I called his victim on the phone. [REDACTED] He knocked on the door and she said, "Come in." Is that breaking and entering? A neighbor evidently called the police and this is when the charges began to multiply.

EXHIBIT ~~B-9~~ B-9

~~EXHIBIT B-9~~
EXHIBIT ~~B-9~~ B-9

Charles M. Oberly, III, July 3, 1993, Page 2.

When I spoke with the victim, I said to her. Remember, this is suppose to be a rape victim. "Do you know they are giving Thomas Miller ten years in prison for what happen at your home." She said, "Oh no! That is too much." Did you ever hear a rape victim say ten years in prison was too much for a rape?

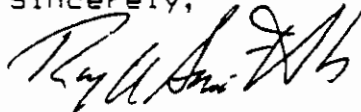
I then said to this so called victim. "How much time in prison do you think he should get?" She said, "He has had enough." I said, "What do you mean by that?" She said, "The time he has already spent in prison is enough." I said, "Do you think he should be set free?" She said, "yes." This women, in my professional opinion was never raped.

I have written to Mr. James Adkins and requested his help. However, I will be surprised if I hear from him, unless you put pressure on him.

I am one of many citizens who are getting more and more concerned about how much "Justice" is in the Justice system. Some are suggesting a "Court Watch", where interested citizens monitor the court hearings and write reports on their fairness. I hope something can be done within the system itself.

Thank you for whatever you can do to get those who work from your office to seek truth more than a conviction.

Sincerely,



Roy A. Smith, Sr., D.Min., Ed.M.
Executive Director/Therapist

CC: Judge William Swain Lee
Thomas Miller ✓
File

B-113

AFTERNOON SESSION

(At 1:30 o'clock p.m., trial in the above-entitled matter was reconvened in open court, at the conclusion of the luncheon recess.)

MS. BEAUREGARD: Your Honor, I have had an opportunity to review the ten pages of police reports that were not supplied to defense counsel pursuant to the waiver of preliminary hearing agreement. I have had an opportunity to briefly skim the contents of these documents, although I have not had an opportunity to review them with Mr. Miller.

In reviewing these documents, certain supplemental pages referred to a piece of evidence, in particular, a pair of underwear, that was retrieved by Patrolman Ritter in the sally port at S.C.I. That evidence was not supplied to me at the time I went out to review the evidence last week, and it is my understanding that they cannot find that article of clothing at this point. I do not know what relevance it is, except that this is an unlawful sexual intercourse case and it is a piece of underwear, and I have to assume that it has some relevance.

At this point, I am concerned that the

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1 defense was not supplied with the reports in a timely
2 fashion, and I am concerned that there now appears to
3 be an article of clothing that is missing from the
4 evidence locker. Based on my inability to effectively
5 review these documents --

6 THE COURT: I will give you an opportunity.
7 We will advise the jury that matters have to be taken
8 up, and if they would like to take a walk around town,
9 rather than being in there for an hour, we will give
10 them a break for another hour. The Court also wants a
11 copy of what was provided to defense counsel so the
12 Court can examine it.

13 MS. BEAUREGARD: In connection with the
14 evidence, several copies that I have will not come out
15 on a copy machine.

16 THE COURT: You look at whatever is available
17 to be read. After you looked at it, give me a copy of
18 what there is. If there is anything that is relevant
19 that I cannot read on there, I am sure you will point
20 that out to me.

21 As to the missing underwear, I will cross
22 that bridge when I come to it. The State has
23 stipulated to that which is favorable. In other words,

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1 I think they stipulated that there was no semen. none

2 MS. BEAUREGARD: The entire F.B.I. report.

3 THE COURT: No semen was located. That would
4 be the most favorable inference that could be deemed
5 for the defense. In other words, if there was semen,
6 it could be potentially -- none

7 MS. BEAUREGARD: Culpatory.

8 THE COURT: If there is not semen, it is
9 exculpatory, and they are saying they cannot find any
10 semen. You think about your position on that, and,
11 Mr. Adkins, you think about your position on that. We
12 will go ahead and take an hour and let her digest
13 eleven pages. It is not a one-page report.

14 MR. ADKINS: There is one thing that you have
15 not been told so far. Yes, there is one supplement
16 report that mentions, back on December 1st, Officer
17 Ritter's getting a call and going out to the prison and
18 getting this pair of briefs. We can put him on the
19 stand maybe sometime during this hour. This can all be
20 explained so that you know this underwear has nothing
21 to do with the case. That is the first thing. You
22 will know that the underwear has nothing to do with
23 this case. trying to set-up holding evidence.

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1 Then secondly, the other ten pages -- and
2 Miss Beauregard can stand right here and correct me if
3 I am wrong -- all have to do with when Sergeant Swain.
4 "Sergeant Swain picked up the evidence and took it to
5 the F.B.I. I went and got it to the F.B.I. I took
6 Miss Pederson to the hospital and they took blood
7 samples." There is nothing in these reports that has
8 any substance of any interview. It is a chain of
9 custody. That is why it should not take a full hour to
10 digest.

11 MS. BEAUREGARD: I will take half an hour.
12 But I think I should have an opportunity to review it
13 with Mr. Miller.

14 THE COURT: I think you should, too. Now
15 that you know what it is, it is half an hour. You let
16 me have a copy of it. Deliver it to chambers.

17 Tell them that we are not going to get
18 started until 2:00 o'clock or maybe a little after.
19 Find out if they want sodas or whatever. The State is
20 buying. I do not mean Mr. Adkins. I mean the State of
21 Delaware.

22 MR. ADKINS: I also want to state for the
23 record, although I know this does not play a major part

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LASER STUCK FORM B

THE COURT REPORTER 1-800-233-3040

1 in the Court's ruling at all, that these are reports
2 that the Attorney General's Office did not have in its
3 file whatsoever. *The police with holding reports*

4 *evidence*
THE COURT: I understand. Thank you.

5 (Whereupon, a brief recess was taken, at
6 the conclusion of which the following proceed-
7 ings were had in open court:).

8 THE COURT: Where are we?

9 MS. BEAUREGARD: I had an opportunity to
10 review the documents with Mr. Miller. They are pretty
11 much as Mr. Adkins has set forth, transporting and
12 collecting evidence, and such. I believe we have had
13 an opportunity to review them, and I thank the Court
14 for letting Mr. Miller review those documents.

15 THE COURT: All right, so we are starting
16 back then with the officer on the stand in cross-
17 examination; is that correct?

18 MS. BEAUREGARD: Yes.

19 THE COURT: Bring the jury in.

20 (Whereupon, the jury returned to the jury
21 box and the following proceedings were had in
22 open court:)

23 THE COURT: Ladies and gentlemen, I

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Ritter - Cross

B-118

1 apologize. I know that it is a beautiful day out there
2 and you have those windows and you are looking out
3 there and you are stuck in here. The only thing I can
4 do is basically say that it is not a big surprise,
5 because I told you at orientation that this would
6 happen. It is the nature of the beast, especially in
7 criminal trials. I apologize for the inconvenience to
8 you.

9 Ms. Beauregard?

10 MS. BEAUREGARD: Thank you, Your Honor.

11 CROSS-EXAMINATION (Cont'd))

12 BY MS. BEAUREGARD:

13 Q I believe where we left off, Officer Ritter,
14 is I had asked you when your next contact was with
15 Miss Pederson after the 29th of November, and you had
16 testified that you thought it was sometime in December?

17 A That is correct.

18 Q You have had an opportunity to review your
19 report. Can you state when that was?

20 A Not the exact date, no, without walking back
21 over and looking at my report.

22 Q Approximately when was it?

23 A I believe it was the 10th.

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Swain - Direct

B-190

1 THE COURT: Call your first witness.

2 MS. BEAUREGARD: I would call Detective Steve
3 Swain to the stand.

4 Whereupon,

5 STEVE T. SWAIN

6 was called as a witness by and on behalf of the
7 defendant and, having having been first duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BEAUREGARD:

11 Q Good afternoon, Detective Swain. You are
12 employed by the Delaware State Police; is that correct?

13 A Yes, I am.

14 Q And in what capacity are you employed?

15 A I am an evidence technician.

16 Q And what exactly does an evidence technician
17 do?

18 A Basically, I go to crime scenes and collect
19 evidence.

20 Q Were you involved in the compiling of
21 evidence to be submitted to the Federal Bureau of
22 Investigation in regard to the case of State versus
23 Thomas R. Miller?

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LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

1 A Yes, I was.

2 Q And in what capacity were you involved in
3 that?

4 A Officer Ritter came to my department and
5 asked for assistance.

6 Q And did you assist him?

7 A Yes, I did.

8 Q And in what way did you assist him?

9 A Basically, what I did, you know, I instructed
10 him what evidence should be taken to the F.B.I. Lab for
11 examination.

12 Q And what did you instruct him?

13 A All right, he brought several different items
14 over, and, basically, I took a look at it. And the
15 items that I picked that he should take over were the
16 victim rape kit, and suspect kit, and some items of
17 clothing, and bed sheets, et cetera.

18 Q What is included in these kits that you refer
19 to?

20 A Basically, they can be swabbings that are
21 taken from the victim. There can be hair cuttings,
22 hair pullings. Things like that.

23 Q And do you know what specific things were

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1 taken in this case?

2 A Well, the kit itself I looked at briefly. I
3 am not exactly sure what was in it.

4 Q I am going to ask you to look at this
5 document and tell me if you can identify it, and then I
6 will ask you if that helps refresh your memory as to
7 what was included in those kits?

8 A Yes, it does.

9 Q Can you tell the jury exactly what type of
10 evidence was gathered and what type of evidence was
11 analyzed by the F.B.I.?

12 A All right. What was sent over was four sets
13 of vaginal slides. That is where they take a swab and
14 put it on an actual glass slide and send it to the lab.
15 They also did the same thing orally to the victim and
16 genitally. That is on the outside. Also took pubic
17 hair combings. That is where you collect suspect
18 combings and from the victim. And the victim's slip, a
19 gown was sent, a tee-shirt, and then a blood sample
20 from the victim was also collected. Additionally,
21 other blood samples were collected, too.

22 Q And those samples, were they collected from
23 both Mrs. Pederson and Mr. Miller?

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OFFICIAL COURT REPORTER

1 A Yes, they were, and, also, there were head
2 hair samples and pubic hair samples.

3 Q There was blood?

4 A Yes.

5 Q Head hair?

6 A Yes.

7 Q Pubic hair combings?

8 A That's right.

9 Q Saliva?

10 A That's correct.

11 Q Vaginal swabs?

12 A That's right.

13 Q Oral swabs?

14 A Yes.

15 Q And some articles of clothing?

16 A That's correct.

17 Q Why do you collect such evidence in a case
18 such as this, an unlawful sexual intercourse case?

19 A Basically, when a sexual-type assault takes
20 place, there is a transfer of evidence, and that can be
21 blood, that can be semen, it can be hair, it can be
22 fibers. A lot of times these things can be located and
23 identified to an particular suspect, particularly with

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Swain - Direct

B-194

1 DNA testing.

2 Q So when you say "a transfer of evidence",
3 that means that hairs from one individual may get
4 transferred onto the other?

5 A That's right.

6 Q Did you submit these samples to the F.B.I.?
7 Did you transmit them yourself?

8 A Yes, I did.

9 Q And the results of the F.B.I. analysis, when
10 are they dated?

11 A All right, the report here is dated June 9,
12 1993.

13 Q Are you familiar with these types of results?
14 Have you dealt with those as an evidence technician in
15 your work?

16 A Yes, I have.

17 MS. BEAUREGARD: I guess I should have this
18 marked as a defense exhibit for identification.

19 MR. ADKINS: No objection for it to go into
20 evidence.

21 THE COURT: Defense Exhibit No. 1.

22 MS. BEAUREGARD: I guess it would be No. 2.

23 THE COURT: Whatever the next exhibit.

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Swain - Direct

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1 THE CLERK: Admitted as Defendant's Exhibit
2 No. 1.

3 (A document was marked as
4 Defendant's Exhibit No. 1 and
5 was admitted into evidence.)

6 BY MS. BEAUREGARD:

7 Q I believe I had asked you if you know how to
8 read the results of these tests?

9 A Yes, I do.

10 Q If you can turn to the second page of this
11 report, at the bottom of that page, where it has
12 "Result of Examination". Would you please interpret
13 what that means?

14 A It says down here, "The known blood samples
15 were grouped as follows: K-1, Pederson," and she has a
16 different blood profile there. That is basically
17 standard serology, which each one of them means, I
18 don't particularly know. But they are definitely
19 different here. These are not DNA comparisons.

20 Q These are just blood types, blood samples?

21 A Right.

22 Q And what was the conclusion of the testing of
23 the F.B.I. in regard to the blood samples?

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LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

Swain - Direct

B-196

1 A Basically, they said no blood or semen was
2 found in Specimens Q-1 to Q-9, and Q-1 to Q-9 were all
3 vaginal swabs or oral swabs. the swabbings.

4 Q So based on your terminology, a transfer of
5 evidence, based on these tests, none of that evidence
6 transferred onto the samples that were submitted to the
7 F.B.I.?

8 A There is no blood or semen located.

9 Q How about Q-10, which are the pubic hair
10 combings?

11 A There was also no pubic hairs of suspect
12 found in Specimen Q-10.

13 Q Specimen Q-10 are specimens of pubic hairs of
14 Mrs. Pederson; is that correct?

15 A Yes, that's correct.

16 Q Likewise, the next line, what were the
17 findings on the next line?

18 A "No hairs like the pubic hairs of the victim
19 were found in Specimen Q-14." That would have been
20 from the defendant.

21 Q So, again, there was no transfer of that
22 particular type of evidence on the sample submitted?

23 A That's right.

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LASER STOCK FORM B

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Swain - Direct

B-197

1 Q Is there any indication on this report as to
2 whether or not the head hairs from Mrs. Pederson or
3 Mr. Miller were analyzed or found?

4 A It basically says here, "In view of the fact
5 that the suspect was arrested in the victim's bed with
6 the victim, no further hair or fiber examinations are
7 being conducted."

8 Q So, basically, that means that, "We are not
9 going to conduct any further investigation, other than
10 what we have done above"?

11 A That's correct.

12 Q So all of the specimens that the F.B.I. chose
13 to examine, pubic hair combings from both Mr. Miller
14 and Miss Pederson and the search for blood or semen,
15 all of those came back negative; is that correct?

16 A That's correct.

17 Q You made a statement earlier that a lot of
18 times in a case like this there is a transfer of
19 evidence?

20 A I am just going by all the cases I am
21 involved in. There is a lot of times when there is
22 not.

23 Q So sometimes there is and sometimes there is

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Swain - Direct

B-197

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Swain - Cross

B-198

1 not, or a lot of times there is? I guess I am asking
2 you to interpret.

3 A It just depends upon what extent the activity
4 continued, how long. The longer it occurred, the more
5 evidence you would have.

6 Q Based on the F.B.I. report that you have just
7 testified from, there is no objective evidence, as far
8 as the samples submitted, that would indicate that any
9 contact occurred?

10 A By "objective" do you mean -- you said
11 "objective evidence". What do you mean?

12 Q Objective as samples that were submitted, the
13 hair fibers and those types of things?

14 A There was none located to connect, that's
15 correct.

16 MS. BEAUREGARD: Your Honor, I have nothing
17 further of this witness.

18 CROSS-EXAMINATION

19 BY MR. ADKINS:

20 Q Good afternoon, Detective Swain.

21 A Good afternoon.

22 Q You said the longer the activity occurs, the
23 more chance that you might be able to get some

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OFFICIAL COURT REPORTER

Swain - Cross

B-198

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LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

Swain - Cross

B-199

1 evidence?

2 A That's correct. With two rubbing up against
3 each other, you have more hair and fiber exchange.

4 Q Where do you get fiber exchange?

5 A Well, from clothing. But if they are nude,
6 they won't.

7 Q That is what I mean. How about if the person
8 is totally naked? Why would you expect to have a fiber
9 transfer?

10 A Well, you wouldn't.

11 Q You went through these items that went to the
12 F.B.I., Q-1 through Q-9. Oral swabbings are four of
13 these items, aren't they, Q-5, Q-6, Q-7, and Q-8?

14 A That's correct.

15 Q If this happens to be a case where there is
16 not even the slightest indication that there was
17 anything done orally, no penis put in anybody's mouth,
18 why would you expect to have any positive type of
19 evidence from an oral swab?

20 A You wouldn't.

21 Q No blood was found. On vaginal swabbings and
22 slides, what kinds of blood would you be looking for as
23 an investigator and evidence technician for that type

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OFFICIAL COURT REPORTER

Swain - Cross

B-199

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22 slides, what kinds of blood would you be looking for as
23 an investigator and evidence technician for that type

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OFFICIAL COURT REPORTER

R-1A

Swain - Cross

B-200

1 of person? What type of blood would you be looking to
2 find from a vaginal swabbing, for example, from
3 Miss Pederson?

4 A Well, it could be from injury.

5 Q Or how about from the defendant?

6 A That could be possible, too.

7 Q If there is no evidence that the defendant's
8 penis is bleeding, would you expect to find blood on a
9 vaginal swab?

10 A No, you would not.

11 Q And if the penetration occurs for only a
12 short period of time and there is no ejaculation by the
13 male, would you expect to see any semen on vaginal
14 swabbings?

15 A As long as no ejaculation occurred, you would
16 not.

17 Q Does the absence of semen mean there is no
18 penetration?

19 A No. Penetration can occur without
20 ejaculation, of course.

21 Q So there is not this, "No semen; no
22 penetration"?

23 A That's right.

EILEEN G. KIMMEL
OFFICIAL COURT REPORTER

Swain - Cross

B-200

1 of person? What type of blood would you be looking to
2 find from a vaginal swabbing, for example, from
3 Miss Pederson?

4 A Well, it could be from injury.

5 Q Or how about from the defendant?

6 A That could be possible, too.

7 Q If there is no evidence that the defendant's
8 penis is bleeding, would you expect to find blood on a
9 vaginal swab?

10 A No, you would not.

11 Q And if the penetration occurs for only a
12 short period of time and there is no ejaculation by the
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22 penetration"?

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EILEEN G. KIMMEL
OFFICIAL COURT REPORTER

Swain - Cross

B-201

1 Q No semen or ejaculation; is that right?

2 A Right.

3 Q Is there always hair transfers in sexual
4 intercourse cases?

5 A Frequently, we do not get any match at all,
6 and then, of course, like I said, a lot of times we do.
7 But it can go either way.

8 THE COURT: The Court would rather rest on
9 the facts of the case and not probabilities.

10 BY MR. ADKINS:

11 Q When the F.B.I. report states, "No hairs like
12 the pubic hairs of the suspect were found in Specimen
13 Q-10," which is pubic hair combings from the victim,
14 does that just mean that they were not able to come up
15 with any of his pubic hair in the particular spot where
16 they combed her pubic hair?

17 A That's right.

18 Q And wouldn't they have to have loose pubic
19 hair in the beginning for it to transfer?

20 A It could be loose hairs or hairs that are
21 getting ready to fall out.

22 Q These pubic hair combings, is the whole area
23 of the pubic hair combed?

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OFFICIAL COURT REPORTER

Swain - Cross

B-201

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13 Q-10," which is pubic hair combings from the victim,
14 does that just mean that they were not able to come up
15 with any of his pubic hair in the particular spot where
16 they combed her pubic hair?

17 A That's right.

18 Q And wouldn't they have to have loose pubic
19 hair in the beginning for it to transfer?

20 A It could be loose hairs or hairs that are
21 getting ready to fall out.

22 Q These pubic hair combings, is the whole area
23 of the pubic hair combed?

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Swain - Redirect

B-202

1 A Well, if you do it right, it should be. I
2 didn't collect the samples.

3 Q You do not know what area was being taken in
4 this sample or combed in this case, do you?

5 A That's right. So I don't know if it was done
6 right or not.

7 MR. ADKINS: No further questions.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 BY MS. BEAUREGARD:

11 Q You did not personally observe the taking of
12 the samples in this case; is that correct?

13 A That's correct.

14 Q And you have stated that proper procedure on
15 the pubic hair combings would be to comb the whole
16 area?

17 A That's right.

18 Q Have you ever used Beebe Hospital in your
19 investigations in regard to taking these samples?

20 A See, a physician actually examines the female
21 victim. I don't get involved in that.

22 Q So you have never been involved in a case
23 where Beebe Hospital had been involved in taking

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Swain - Redirect

B-203

1 samples?

2 A I am involved in cases where a victim is
3 examined at Beebe Hospital, yes.

4 Q Is it also not true that minimal contact can
5 result in an exchange or transfer of evidence?

6 A Well, it is possible, but the more contact,
7 the more likely you would have hairs.

8 MS. BEAUREGARD: I have nothing further.

9 THE COURT: Do you have any further
10 questions, Mr. Adkins?

11 MR. ADKINS: No, Your Honor.

12 THE COURT: The witness is excused. Thank
13 you.

14 (Witness steps down.)

15 THE COURT: Let me see counsel for
16 scheduling.

17 (Whereupon, counsel approached the bench
18 and a discussion was had off the record, at
19 the conclusion of which counsel returned to
20 the trial table and the following proceedings
21 were had in open court:)

22 THE COURT: Ladies and gentlemen, before we
23 get to the next witness, it is going to get later than

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DEF ATTY R. Besmer

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0.1	0.0000	0.0001	0.0004	0.0009	0.0016	0.0025	0.0036	0.0049	0.0064	0.0081
0.2	0.0001	0.0004	0.0009	0.0016	0.0025	0.0036	0.0049	0.0064	0.0081	0.0100
0.3	0.0004	0.0009	0.0016	0.0025	0.0036	0.0049	0.0064	0.0081	0.0100	0.0121
0.4	0.0009	0.0016	0.0025	0.0036	0.0049	0.0064	0.0081	0.0100	0.0121	0.0144
0.5	0.0016	0.0025	0.0036	0.0049	0.0064	0.0081	0.0100	0.0121	0.0144	0.0169
0.6	0.0025	0.0036	0.0049	0.0064	0.0081	0.0100	0.0121	0.0144	0.0169	0.0196
0.7	0.0036	0.0049	0.0064	0.0081	0.0100	0.0121	0.0144	0.0169	0.0196	0.0225
0.8	0.0049	0.0064	0.0081	0.0100	0.0121	0.0144	0.0169	0.0196	0.0225	0.0256
0.9	0.0064	0.0081	0.0100	0.0121	0.0144	0.0169	0.0196	0.0225	0.0256	0.0289
1.0	0.0081	0.0100	0.0121	0.0144	0.0169	0.0196	0.0225	0.0256	0.0289	0.0324

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DEFENSE EXHIBITS

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B22C Medical

[illegible]

A blank coordinate plane with a horizontal x-axis and a vertical y-axis intersecting at the origin. The axes are labeled with 'x' and 'y' at their positive ends. There are no tick marks or grid lines shown.

Age Group	Percentage of Respondents
18-29	85%
30-49	80%
50-69	75%
70+	70%

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A blank coordinate plane with a horizontal x-axis and a vertical y-axis intersecting at the origin. The axes are represented by thin black lines.

Age Group	Percentage of Respondents
18-29	85%
30-49	80%
50-69	75%
70+	70%

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May 23, 1994
Time Picked 12:55

S T A T E V. M I L L E R

B-10 B-10

Budzisz, Stanley E. Age: 72 Race: White Sex: M Occupation: Retired	White, Kevin H. Age: 72 Race: White Sex: M Occupation: Engineer	Jackson, Clarence R. Age: 72 Race: White Sex: M Occupation: Technician	Warren, Gloria J. Age: 72 Race: White Sex: F Occupation: Manufacturer	Magee, Ethel E. Age: 72 Race: White Sex: F Occupation: Factory Worker	Roth, Beatrice M. Age: 72 Race: White Sex: F Occupation: Machine Operat.
Farnell, Mary S. Age: 51 Race: White Sex: F Occupation: (not listed)	Hastings, Clarabelle Age: 58 Race: White Sex: F Occupation: Machine Oper.	Richards, Michael R. Age: 35 Race: White Sex: M Occupation: Construction	Spross, Robert F. Age: 42 Race: White Sex: M Occupation: Unemployed	Fisher, Delores F. Age: 49 Race: White Sex: F Occupation: Unemployed	Elliott, Mary A. Age: 48 Race: White Sex: F Occupation: Teacher

ALTERNATES

Barbosa, Mario A. Age: 51 Race: Hisp. Sex: M Occupation: Engineer	Robert., Rebecca K. Age: 25 Race: White Sex: F Occupation: Typist	Semmington, Margaret R. Age: 66 Race: White Sex: F Occupation: Retired	Adams, James W. Age: 66 Race: White Sex: M Occupation: Retired
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